

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 TERRE HAUTE DIVISION

CITIZENS INSURANCE COMPANY)	
OF AMERICA, as subrogee of)	
TERRE HAUTE REALTY CORP.,)	
A Michigan Corporation,)	
)	
Plaintiff,)	
)	
v.)	2:11-cv-72-JSM-WGH
)	
MESSAGE WAREHOUSE, a Division of)	
SCRIP, INC., an Illinois Corporation,)	
CHARKIT CHEMICAL CORPORATION,)	
a Connecticut Corporation, and)	
BON VITAL, INC.,)	
a Wisconsin Corporation,)	
)	
Defendant.)	

**ENTRY ON DEFENDANT’S MOTION FOR LEAVE TO FILE CROSS-CLAIMS
 AGAINST CO-DEFENDANTS CHARKIT AND BON VITAL**

This matter is before the court on Defendant Massage Warehouse’s Motion for Leave to File Cross-Claims Against Co-Defendants Charkit and Bon Vital filed February 15, 2012. (Docket No. 66). No Response has been filed.

I. Discussion

Massage Warehouse, filed this motion seeking to add cross-claims against Defendants Charkit Chemical Corporation (“Charkit”) and Bon Vital, Inc. (“Bon Vital”). Federal Rule of Civil Procedure 13(g) provides that “[a] pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the

original action.” Fed. R. Civ. P. 13(g). However, “once the parties have filed their initial pleadings, any motion to amend those pleadings and file a cross-claim must be made pursuant to Federal Rule of Civil Procedure 15.” *Tragarz v. Keene Corp.*, 980 F.2d 411, 431 (7th Cir. 1992).

Rule 15(a) of the Federal Rules of Civil Procedure permits the amendment of a pleading after a responsive pleading has been filed only upon leave of the court or consent of the adverse party, but notes that leave should be freely given when justice requires. FED. R. CIV. P. 15. “Although the rule reflects a liberal attitude towards the amendment of pleadings, courts in their sound discretion may deny a proposed amendment if the moving party has unduly delayed in filing the motion, if the opposing party would suffer undue prejudice, or if the pleading is futile.” *Campania Management Co., Inc. v. Rooks, Pitts & Poust*, 290 F.3d 843, 848-49 (7th Cir. 2002).

In this case, Plaintiff filed suit alleging that a massage oil that was manufactured by Charkit, packaged by Bon Vital, and distributed by Massage Warehouse caused a fire that damaged property insured by Plaintiff. Massage Warehouse filed the motion at issue here seeking to add a cross-claim against both Charkit and Bon Vital alleging that they, as manufacturer and packager of the massage oil, have a duty to defend and indemnify Massage Warehouse against Plaintiff’s claim involving an injury caused by the massage oil. Neither Plaintiff nor either of the other Defendants have objected to addition of the cross-claims. There has also been no showing that any party would suffer prejudice by allowing the addition of these cross-claims or that such cross-claims would be futile. Because

there has been no showing of prejudice or that adding these cross-claims would be futile, the Court grants Massage Warehouse's motion.


II. Conclusion

For the reasons outline above, Defendant Massage Warehouse's Motion for Leave to File Cross-Claims Against Co-Defendants Charkit and Bon Vital is

GRANTED.

SO ORDERED.

Dated: 03/06/2012



William G. Hussmann, Jr.
United States Magistrate Judge
Southern District of Indiana

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